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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,752	02/13/2002	Kieth G. Spitler	Mo6806/MD-99-39B-PU	9963
157	7590	11/17/2005	EXAMINER	
BAYER MATERIAL SCIENCE LLC 100 BAYER ROAD PITTSBURGH, PA 15205			COONEY, JOHN M	
			ART UNIT	PAPER NUMBER
			1711	

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/074,752

Applicant(s)

SPITLER ET AL.

Examiner

John m. Cooney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4-9 and 11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-9 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11-2-05 has been entered.

All previous rejections are withdrawn in light of the amendments now entered and further consideration.

The following is a new grounds of rejection:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP-0,005,903 in view of Plummer et al.(6,284,809).

EP-0,005,903 discloses methods for preparing cellular polyurea compositions by mixing isocyanates having functionality and isocyanate group content values as claimed and water in stoichiometric excess quantities as claimed wherein the disclosed reactive

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mixtures may be combined with additives inclusive of fillers and other materials and are employed in applications inclusive of molding applications as claimed and applications including heating the mixtures (see page 3 line 8 – page 4 line 9, page 8 lines 27 et seq., page 10 line 14 – page 11 line 6, and the examples, as well as, the entire document).

EP-0,005,903 differs from the claims in that inorganic, hollow, glass microspheres are not exemplified as being useable additives. However, Plummer et al. discloses the usefulness of the employment of inorganic, hollow, glass microspheres in the making of resin composites inclusive of polyurea composites for the purpose of providing strong, buoyant, insulation materials (see column 1 in its entirety, column 2 lines 28-43, and column 3 lines 9-14 and 63-65, as well as, the entire document). Accordingly, it would have been obvious for one having ordinary skill in the art to have employed the glass microspheres disclosed by Plummer et al. as additives in the preparations of EP-0,005,903 for the purpose of imparting their strength and insulation effects in order to arrive at the products and processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

EP-0,005,903 differs from the claims in specifics of its heating operations and catalyst utilization in that emphasis is made on the employment of catalyst rather than heating to move the reactions forward. However, it is well known and obvious to substitute heating for catalysts, and, conversely, catalysts for heating in controlling reaction rates. Accordingly, it would have been obvious for one having ordinary skill in the art to have employed heating in the alternative to the additional presence of

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catalysts within the processes of EP-0,005,903 for the purpose of achieving their respective reaction inducing effects in order to arrive at the products and processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results. EP-0,005,903 discloses an advance in the art by employing the benefits of catalyst to aid in the moving of the reactions to completion with benefits of energy expense being obtained. If one were to rely upon heating the starting materials to move the reactions of the instant concern to completion, then the use of energy saving catalyst would no longer be necessary.

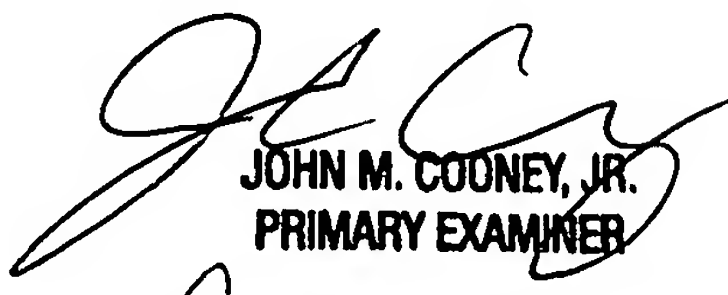
EP-0,005,903's difference in the inclusion of flame retardants, additionally, does not rise to the level of patentable distinction for the instant claims. If one were not interested in the flame retardancy of their obtained articles, then they would have excluded their employment with the expected loss of flame retardant effect.

Accordingly, it would have been obvious for one having ordinary skill in the art to have excluded fire retardants from the preparations of EP-0,005,903 with the consequential loss of fire retardant effect in order to arrive at the products and processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Cooney whose telephone number is 571-272-1070. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JOHN M. COONEY, JR.  
PRIMARY EXAMINER  
